

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED
OCT 02 2014
Clerk, U.S. District Court
District Of Montana
Billings

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHRISTOPHER MICHAEL EMTER,

Defendant.

CR 14-89-BLG-SPW

OPINION AND ORDER

Before the Court is Defendant Christopher Michael Emter's Motion to Proceed and/or Dismiss. The grand jury indicted Emter in this case on September 4, 2014, and an arrest warrant was issued the same day. The warrant has not been executed, and Emter has not appeared on the pending criminal charges. *See* Fed. R. Crim. P. 4(c)(3)(A), 5(a)(1)(A). The criminal case was sealed upon filing of the Indictment. It remains sealed because Emter has not been arrested and has not made an appearance in this Court. *See* D. Mont. L.R. 6.2. According to Emter, a federal detainer was submitted to the Yellowstone County Detention Facility ("YCDF") on September 4, 2014. (Doc. 4 at 2). According to the inmate search on the YCDF website,¹ Emter is charged with a felony probation violation and numerous other felonies out of Stillwater County. He was booked into YCDF on

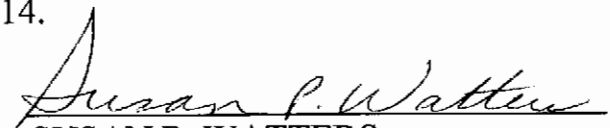
¹ This search feature can be found at www.co.yellowstone.mt.gov/sheriff/detention/dcsearch.asp (last accessed October 1, 2014).

February 14, 2013, has opted to continue his trial on at least one occasion, and is being held on a state \$200,000 bond.

Although a federal detainer has been lodged against Emter, the Interstate Agreement on Detainers, 18 U.S.C. App. 2, does not apply at this time because Emter is not merely "serving a sentence" at YCDF, *see United States v. Mauro*, 436 U.S. 340, 359 (1978) (quoting H.R. Rep. No. 91-1018 at 2 (1970)); he is facing pending state criminal proceedings. The federal Speedy Trial Act also does not apply to him at this time. 18 U.S.C. § 3161(c)(1). To the extent Emter has suffered pre-indictment delay or prejudice due to delay between indictment and arrest or appearance, or to the extent he believes he has other defenses, he may raise such claims after he appears in federal court. *See generally United States v. Mendoza*, 520 U.S. 758, 762-65 (2008); *United States v. Santana*, 526 F.3d 1257, 1261-62 (9th Cir. 2008).

As Emter has not yet been arrested on the Indictment, an appearance in federal court is not necessary. Accordingly, IT IS HEREBY ORDERED that Emter's Motion to Proceed and/or Dismiss (Doc. 4) is DENIED.

DATED this 7th day of October, 2014.


SUSAN P. WATTERS
United States District Judge